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SUBJECT: INSTRUCTIONS FOR SPECIAL TRIBUNAL FOR LEBANON
MANAGEMENT COMMITTEE ISSUES

REF: USUN 79

Classified By: IO PDAS James B. Warlick, for reasons 1.4 (b) and (d).

11. (C//NF) This cable contains guidance requested by Post in reftel on two outstanding issues for the Special Tribunal for Lebanon: 1) how the Management Committee will make decisions, and 2) additional compensation for the Lebanese judges. See paras 3 and 6 respectively for specific guidance.

Decision-making on the Management Committee

12. (C//NF) Department's priorities for decision-making on the Special Tribunal for Lebanon's Management Committee are two-fold. First, in addition to being a tool for justice, the Special Tribunal for Lebanon will operate to maintain international pressure on Syria and those in Lebanon who seek to undermine Lebanon's democracy using violence and terrorism. As such, it is important that the U.S. and like-minded supporters of an independent and democratic Lebanon maintain sufficient control over the Tribunal to ensure that it moves quickly. Because the European members of the committee vastly outnumber us, we want to help ensure against the Europeans (or any other bloc) using their larger numbers to override our preferences via a straight 2/3 or majority rule voting model. Second, the French are concerned that those who are opposed to the Tribunal or their proxies could obtain a seat on the Management Committee and subsequently use the position to undermine the Tribunal's effectiveness. At the same time, the Dutch are specifically concerned that a change in the Government of Lebanon could result in a pro-Syrian GOL using any veto on the Management Committee to stall progress. Therefore, the U.S. agrees that the Management Committee should be structured in a way that limits the ability of other parties to block Management Committee decisions and thereby undermine the Tribunal.

13. (C//NF) USUN should pursue the following objectives in negotiating a structure for decision-making on the Management Committee for the Special Tribunal for Lebanon:

-- ensure that the structure induces the other members of the committee to work toward consensus with the U.S. and helps to protect against the risk of any bloc (European, Arab, etc.) consistently outvoting the United States and other allies of a sovereign Lebanon.

-- help to protect against the risk of a future pro-Syrian Government of Lebanon or any country that subsequently becomes a member of the Management Committee blocking the

Tribunal's progress via its use of its individual veto on Management Committee decision-making.

¶4. (C//Releasable to UNOLA and donor countries) Among the options (some elements of which can be interchanged) to accomplish these goals are, in order of preference:

A) Decisions would require unanimity of all founding members (including the GOL) with the inclusion of a provision under which the agreement of the GOL would not be required if it is not current in payments of its required portion of the budget (Note: that if the GOL's payments are late for a short time, the GOL will quickly regain its "voting" privileges. End note.) This option maintains the U.S. veto on Committee decisions, provides a vote and veto to the GOL, but helps guard against a future pro-Syrian Lebanese government using the Management Committee to block the Tribunal (on the assumption that if a future GOL opposes the Tribunal, it will refuse to pay its 49% of the budget).

B) Decisions will be made by consensus of all founding members who are voluntary contributors with the inclusion of language along the following lines in the Terms of Reference:

"In making decisions, the Management Committee shall in particular take into account views expressed by the Government of Lebanon, and any such decisions shall in addition require the consensus of the representatives of the Member States listed in section 2(1) (of the Terms of Reference of the Management Committee) that have provided voluntary contributions pursuant to paragraph 5 of the annex to Security Council resolution 1757." This option maintains a U.S. veto, limits any similar right of a veto to the other original non-Lebanese members of the Committee, and gives the GOL a voice (but not a veto) on Committee decisions.

C) Decisions will be made by a 2/3 vote of the entire Committee with the inclusion of a provision that would stipulate that "all budgetary matters" require the "consent of all voluntary contributors who were founding members of the Management Committee." This option guards against individual countries blocking progress, gives the GOL a vote, and maintains a U.S. (but not a GOL) veto over budgetary matters. USUN could give a liberal interpretation to "budgetary matters," arguing that all or most matters before the Committee have budgetary implications and, therefore, should require the consent of the founding voluntary contributors.

D) Agree to a 2/3 voting majority on the Committee with an exchange of non-secret side letters with the Europeans stipulating that the Europeans "would agree to vote together with the U.S.," or "would not agree to support a proposal in the face of objections from any of the parties to the side letters," or, less desirably, "work in close coordination with the U.S.," on issues before the Committee. These side letters would be designed to avoid having the U.S. outvoted by the European bloc on the category of issues identified in the side letters. The letters could also be crafted to apply to all issues before the Committee or just focus on budgetary matters. While we have reservations that such an approach may give the appearance of U.S./EU collusion and could be cited as an unhelpful precedent in UN bodies or committees or in other tribunals, we would be willing to accept such an approach if necessary to finalize the negotiations on the terms of reference. We would prefer not to use the "close coordination language" as it eliminates the concept of a U.S. veto.

Conditions of Service for Judges

¶5. (C//NF) While the U.S. does not want to be seen as forward-leaning in providing the Lebanese judges with additional compensation, the U.S. is prepared to support creative solutions worked out and agreed to by the Tribunal donors, UNOLA, and the Lebanese that do not involve direct monthly payments (including housing stipends) from the GOL to

the judges. Department is concerned that direct payments from the GOL to the judges could open the judges up to pressure from the GOL, which could be particularly problematic if at some point there were a change in the GOL's commitment to the Tribunal. The U.S. remains concerned about the appearance of giving extra money to the Lebanese judges who will be serving in The Hague, especially given the hardship and dangers faced by UNIIIC staff in Beirut, but does not want this to stand in the way of hiring the judges. However, we also believe that the compensation package must be established at the outset and not be subject to further demands by the judges in the future.

¶6. (C//NF) USUN should not be forward-leaning on this issue, but it can support solutions that are consistent with paragraph 5. For example, the U.S. could support the option of the GOL providing the judges with a one-time severance package when they leave their positions in Lebanon, or for GOL to make monthly contributions to the Tribunal that would be used by the Tribunal to pay the judges as additional compensation but would continue to be paid even if the GOL cut off its funding. Alternatively, the U.S. could support the option of the GOL making a lump sum contribution to a special trust fund the UN (or possibly the Management Committee) would establish and administer for the Lebanese judges. The funds would be used to make "severance" payments to the Lebanese judges, which the judges would earn for every year they serve on the Tribunal. The Lebanese judges would be eligible to draw down those payments after they finish their service on the Tribunal. Alternatively, the funds could vest annually at a level to be determined, and the judges would receive annual payments.

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